SUPREME COURT, U. S.

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FILED
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 123

MAURICE STEINGOLD, Executor of the Estate of SAMUEL A. STEINGOLD, deceased,

Petitioner,

—against—

CAPITAL AIRLINES, INC., UNITED AIRLINES, INC., VICKERS-ARMSTRONGS, INC., VICKERS-ARMSTRONGS (AIRCRAFT) LTD., Also known as VICKERS-ARMSTRONGS LTD., ROLLS-ROYCE, INC., and ROLLS-ROYCE, LTD.,

Respondents.

[PETITION No. 1]

ERNEST RASSNER, As Assignee of MAURICE STEINGOLD, Executor of the Estate of SAMUEL A. STEINGOLD, deceased,

Petitioner,

—against—

CAPITAL AIRLINES, INC., UNITED AIRLINES, INC., VICKERS-ARMSTRONGS, INC., VICKERS-ARMSTRONGS (AIRCRAFT) LTD., Also known as VICKERS-ARMSTRONGS LTD., ROLLS-ROYCE, INC., and ROLLS-ROYCE, LTD.,

Respondents.

[PETITION No. 2]

(Additional list of titles appears on reverse side of this cover)

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF KINGS

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—against—

CAPITAL AIRLINES, INC., and UNITED AIRLINES, INC.,

Respondents.

[PETITION No. 3]

MAURICE STEINGOLD, Executor of the Estate of SAMUEL A. STEINGOLD, deceased,

Petitioner,

—against—

VICKERS-ARMSTRONGS, INC.,

Respondent.

[PETITION No. 4]

MAURICE STEINGOLD, Executor of the Estate of SAMUEL A. STEINGOLD, deceased,

Petitioner,

—against—

VICKERS-ARMSTRONGS (AIRCRAFT) LTD.,

Respondent.

[PETITION No. 5]

MAURICE STEINGOLD, Executor of the Estate of SAMUEL A. STEINGOLD, deceased,

Petitioner,

—against—

ROLLS-ROYCE, INC.,

Respondent.

[PETITION No. 6]

MAURICE STEINGOLD, Executor of the Estate of SAMUEL A. STEINGOLD, deceased,

Petitioner,

—against—

ROLLS-ROYCE, LTD.,

Respondent.

[PETITION No. 7]

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Respondent.

[PETITION No. 7]

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF KINGS

To the Justices of the Supreme Court of the United States:

Petitioners pray that a writ of *certiorari* issue to the Supreme Court of the State of New York, County of Kings, to review the orders of the New York State Court of Appeals entered in the above entitled cases on February 20, 1964.

Opinions Below

The opinion of the Appellate Division of the Supreme Court of the State of New York for the Second Department is reported in 34 Misc. 2nd 33.

The opinions of the Supreme Court of the State of New York, County of Kings, are not yet officially reported.

Jurisdiction

The orders of the Court of Appeals of the State of New York were dated and entered February 20, 1964, and copies thereof (with notice of entry) were received by petitioners by mail on March 5, 1964.

Jurisdiction of this court to review the above orders by writ of *certiorari* is predicated on 28 USC 1257, subd. 3.

Questions Presented

1. Do the subject orders, of which review is sought herein, constitute deprivation of due process and denial of the equal protection of the law in violation of the mandate of the Fourteenth Amendment to the United States Constitution?

Laws Involved

1. United States Constitution, Fourteenth Amendment.

2. New York State Civil Practice Law and Rules, Sections 5513, 5514 and 5602.

Statement

Since the subject cases involve identical or closely related questions, a single petition for writ of *certiorari* is filed herein pursuant to Supreme Court Rule 23, subd. paragraph 5.

The subject cases are all part of one single litigation instituted by petitioner Maurice Steingold in the Supreme Court of the State of New York, County of Kings, against all the respondents herein as the defendants.

The causes of action pleaded by petitioner against respondents arose out of the crash of a commercial airliner carrying petitioner's decedent as a passenger for hire.

The crash occurred in Virginia. The decedent had been a resident of Virginia during his lifetime.

Petitioner, the executor of the decedent's estate, is a resident of Virginia and his appointment as executor was in the Circuit Court in the City of Norfolk, Virginia.

Th respondents are corporations of States other than New York State, respondents Rolls-Royce, Ltd. and Vickers-Armstrongs, Ltd., being incorporated in England, while the other corporations were duly licensed and authorized to do business in New York State as foreign corporations.

The British corporations denied petitioner's contentions that they are doing business in New York State through subsidiary corporations and sales agents. Respondent Rolls-Royce, Ltd., successfully resisted jurisdiction of a collateral suit in U. S. District Court in Virginia and jurisdiction over this respondent alien corporation cannot be obtained elsewhere.

Petitioner, after the litigation was commenced against respondents, assigned part of his claim to Ernest Rassner, a resident of New York State.

Petitioner's motion to join the assignee as a necessary and indispensable party was denied by the Supreme Court of the State of New York, County of Kings, which denial was affirmed by the Appellate Division of the Supreme Court for the State of New York, Second Department. Leave to appeal was denied by the said Appellate Division and an appeal taken as of right to the Court of Appeals of the State of New York was dismissed on the ground that an appeal as of right did not lie from the order of affirmance,

and petitioner's subsequent motion to the said Court of Appeals for leave to appeal was dismissed upon the ground that the motion was not timely made.

While the appeal was pending before the said Appellate Division, the assignee, Ernest Rassner, moved in the Appellate Division for leave to intervene, which motion was denied.

The assignee's motion to the Court of Appeals for leave to appeal was dismissed on the ground that the motion was not timely made.

Similarly, separate motions made by the respondents herein to dismiss the complaint and to vacate service of process were granted by the Supreme Court of the State of New York, County of Kings.

Petitioner appealed each such order to the Appellate Division of the Supreme Court of the State of New York for the Second Department.

The said Appellate Division affirmed in each case.

Petitioner's motions to the Appellate Division for leave to appeal to the New York State Court of Appeals were denied.

Pursuant to the provisions of Sections 5513, 5514 and 5602 of the Civil Practice Law and Rules of the State of New York (hereinafter CPLR), petitioner appealed as of right to the said Court of Appeals, which appeals were dismissed on the ground that appeals as of right did not lie from the subject orders of affirmance.

Pursuant to the provisions of the said sections 5513, 5514 and 5602, petitioner then moved before the Court of Appeals for leave to appeal from the said orders of affirmance.

These motions were dismissed on the ground that they were not made within the time required by statute, said statute being the said sections 5513, 5514 and 5602.

The said CPLR is a new body of law governing the practice and procedure in the Courts of the State of New York, which became effective and went into operation in September, 1963.

Section 5602 makes provision for appeals to the Court of Appeals by permission.

Section 5513 establishes the time requirements relating to appeals.

Section 5514 provides for alternative methods of appeal and extension of time to take appeals or to move for permission to appeal.

Section 5514 permits an appellant to move for permission to appeal if his appeal taken as of right is denied or dismissed.

This method of extending time for an appellant to use the alternative method of appeal, where his original method is dismissed or denied, is a new provision in the procedural law of the State of New York.

It clearly makes the petitioner's motions for leave to appeal to the Court of Appeals timely, since, in its provisions, petitioner's time for such motion was to be determined from the service upon petitioner of a copy of the order (with notice of entry) dismissing his appeal mistakenly taken as of right to the said Court of Appeals.

The purpose of the new provisions of section 5514 was to prevent an appellant from being penalized by having inadvertently adopted the wrong or erroneous route of appeal under the torturously complicated and complex rules governing the jurisdiction of the Court of Appeals that had been established over many years and by many decisions.

The New York State Legislature enacted section 5514 for the specific purpose of eliminating the injustice that resulted from litigants being barred from appeal by reason of having inadvertently chosen an appeal as of right where only an appeal by permission was permissible and vice versa.

Section 5514 was intended to eliminate the use of the complicated and complex jurisdictional requirements of the New York State Court of Appeals as a trap.

The federal question involved in the dismissal by the Court of Appeals of petitioner's motions for leave to appeal has not heretofore been raised, as the said dismissals were the last proceedings in the subject litigation.

Reasons for Granting the Writ

Newly enacted section 5514 was promulgated by the New York State Legislature to protect petitioner and all other appellants from adoption of an erroneous method of appeal.

The refusal of the Court of Appeals to allow petitioner the protection of this new statute denies petitioner the equal protection of the law and deprives him of due process, in violation of the mandate of the Fourteenth Amendment of the United States Constitution.

This presents a substantial question of tremendous importance to appealing litigants in the State of New York who are entitled to the protection of section 5514.

POINT I

The State Court's wrongful refusal to allow a litigant the benefit or protection of a State statute deprives the litigant of due process and denies him the equal protection of the law, in violation of the Fourteenth Amendment of the United States Constitution.

Petitioner's application to the Court of Appeals for leave to appeal, pursuant to the provisions of section 5514, was made within the time limitation, set forth in section 5513, of thirty days after service upon petitioner of a copy of the order (with notice of entry) dismissing the appeal taken as of right to the said Court of Appeals.

Respondents contended before the Court of Appeals, however, that the said motions for leave to appeal were not timely because they were not taken within thirty days after service of a copy of the order (with notice of entry) of the Appellate Division affirming the Supreme Court decisions dismissing the complaint and setting aside service of the process.

Despite the clear mandate of section 5514, allowing petitioner the protection of computing his time to appeal by leave on motion made within thirty days after service of an order (with notice of entry) dismissing or denying an erroneous method of appeal, the Court of Appeals dismissed petitioner's subject motions, thereby depriving petitioner of the benefits granted to him by the New York State Legislature in enacting section 5514.

The same Court of Appeals in *Morhous* v. *Supreme Court of New York*, 293 N. Y. 131, at page 134, proclaimed that a State can violate the mandate of the Fourteenth Amendment of the Constitution of the United States by the actions of its Courts, where the Court fails to accord an injured person the remedy to which he is entitled.

In *Irvin* v. *Dowd*, 359 U. S. 394, 404, 79 S. Ct. 825, 831, this Court held that:

> "'* * * the state courts, equally with the courts of the Union, * * * (have an obligation) to guard, enforce, and protect every right granted or secured by the Constitution of the United States * * *.' *Robb* v. *Connolly*, 111 U. S. 624, 637, 4 S. Ct. 544, 551, 28 L. Ed. 542."

Clearly, therefore, the Fourteenth Amendment mandate is violated by a Court of the State when it fails to accord to petitioner the protection and benefits of a statute to which petitioner is clearly entitled, which failure bars an allowable appeal by petitioner and, in effect, deprives petitioner of property without due process of law (his cause of action) and, equally as well, denies him the equal protection of the law.

Petitioner's causes of action, for breach of warranty, assault, wrongful death and conscious pain and suffering, are property rights which are protected by constitutional provisions. *Pritchard* v. *Norton*, 106 U. S. 124, 132, 1 S. Ct. 102; *Gibbes* v. *Zimmerman*, 290 U. S. 326, 332, 54 S. Ct. 140, 142.

CONCLUSION

Petitioner's right to due process is the right to have his day in Court and to be heard. *Truax* v. *Corrigan*, 257 U. S. 312, 42 S. Ct. 124.

Petitioner's day in Court includes the right to be heard in the Court of last resort on constitutional questions. *Aero Design* v. *Oklahoma*, 151 F. Supp. 844, affirmed 77 S. Ct. 824.

Wherefore, petitioner, reserving his right to litigate the federal constitutional questions in the Federal Courts, respectfully prays that the writ of certiorari issue to the Supreme Court of the State of New York, for the County

of Kings, to review the subject orders of the Court of Appeals of the State of New York, and petitioner further prays that, on the granting of the writ and on the hearing thereof, the orders of the New York State Court of Appeals dismissing petitioner's motions for leave to appeal be reversed and set aside and that the said motions for leave to appeal be determined in accordance with the provisions of section 5514 of the Civil Practice Law and Rules of the State of New York, and petitioner further prays for such other and further relief as may be just.

Respectfully submitted,

JACOB RASSNER,
Counsel for Petitioner.

APPENDIX A

Laws and Statutes

AMENDMENT XIV OF UNITED STATES CONSTITUTION, Section 1

"* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

New York State Civil Practice Law and Rules: Sec. 5513

TIME TO TAKE APPEAL, CROSS-APPEAL OR MOVE FOR PERMISSION TO APPEAL

(a) TIME TO TAKE APPEAL AS OF RIGHT. An appeal as of right must be taken within thirty days after service upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has entered the judgment or order or served notice of its entry his appeal must be taken within thirty days after he did either.

(b) TIME TO TAKE CROSS-APPEAL. A party upon whom a notice of appeal is served must take an appeal within ten days after such service or within the time limited by subdivision (a), whichever is longer.

(c) TIME TO MOVE FOR PERMISSION TO APPEAL. The time within which a motion for permission to appeal must be made shall be computed from the date of service upon the party seeking permission of a copy of the judgment or order to be appealed from and written notice of its entry, or, where permission has already been denied by order of the court whose determination is sought to be reviewed, or a copy of such order and written notice of its entry,

except that when such party has entered such judgment or order or served notice of its entry the time shall be computed from the date that he did either. A motion for permission to appeal must be made within thirty days.

Sec. 5514

EXTENSION OF TIME TO TAKE APPEAL OR TO MOVE FOR PERMISSION TO APPEAL

(a) ALTERNATE METHOD APPEAL. If an appeal is taken or a motion for permission to appeal is made and such appeal is dismissed or motion is denied and, except for time limitations in section 5513, some other method of taking an appeal or of seeking permission to appeal is available, the time limited for such other method shall be computed from the dismissal or denial unless the court to which the appeal is sought to be taken orders otherwise.

* * *

Sec. 5602

APPEALS TO THE COURT OF APPEALS BY PERMISSION

(a) PERMISSION OF APPELLATE DIVISION OR COURT OF APPEALS. An appeal may be taken to the court of appeals by permission of the appellate division granted before application to the court of appeals, or by permission of the court of appeals upon refusal by the appellate division or upon direct application:

1. in an action originating in the supreme court, a county court, a surrogate's court, the court of claims or an administrative agency.

   (i) from an order of the appellate division which finally determines the action and which is not appealable as of right, or

(ii) from a final judgment of such court or final determination of such agency where the appellate division has made an order on a prior appeal in the action which necessarily affects the final judgment or determination and the final judgment or determination is not appealable as of right pursuant to subdivision (d) of section 5601; and

2. in a proceeding instituted by or against one or more public officers or a board, commission or other body of public officers or a court or tribunal, from an order of the appellate division which does not finally determine such proceeding, except that the appellate division shall not grant permission to appeal from an order granting or affirming the granting of a new trial or hearing.

(b) PERMISSION OF APPELLATE DIVISION. An appeal may be taken to the court of appeals by permission of the appellate division:

1. from an order of the appellate division which does not finally determine an action, except an order described in paragraph two of subdivision (a) or subparagraph (iii) of paragraph two of subdivision (b) of this section or in subdivision (c) of section 5601;

2. in an action originating in a court other than the supreme court, a county court, a surrogate's court, the court of claims or an administrative agency,

(i) from an order of the appellate division which finally determines the action, and which is not appealable as of right pursuant to paragraph one of subdivision (b) of section 5601, or

(ii) from a final judgment of such court or a final determination of such agency where the appellate division has made an order on a prior appeal in the action which necessarily affects the final judgment or determination and the final judgment or determination is not appealable as of right pursuant to subdivision (d) of section 5601, or

(iii) from an order of the appellate division granting or affirming the granting of a new trial or hearing where the appellant stipulates that, upon affirmance, judgment absolute shall be entered against him.

APPENDIX B

Court of Appeals Order

STATE OF NEW YORK,
IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Twentieth day of February A.D. 1964.

PRESENT,

HON. CHARLES S. DESMOND,
Chief Judge, presiding.

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2 Mo. No. 140 B

MAURICE STEINGOLD, Executor of the Estate of SAMUEL A. STEINGOLD, Deceased,
Appellant,

vs.

ROLLS-ROYCE, LIMITED,
Respondent,

and

CAPITAL AIRLINES, INC., *et al.*,
Defendants.

A motion having heretofore been made herein upon the part of the appellant for leave to appeal to the Court of Appeals from the order of the Appellate Division affirming

an order setting aside service of the summons and complaint, and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is dismissed upon the ground it was not made within the time required by statute.

[SEAL]

A copy

/s/ GEARON KIMBALL,
Deputy Clerk.

Note

The foregoing order of the Court of Appeals has been made and entered in each case.

APPENDIX C

Opinion in Appellate Division

No opinions were rendered in the Appellate Division except the following concurring memorandum of Presiding Justice Beldock, Appellate Division, Second Department:

"In my opinion: (1) a cause of action for wrongful death is not a cause of action for 'personal injury' (General Construction Law, Sec. 37-a); (2) only a cause of action for 'personal injury' is not assignable (Personal Property Law, Sec. 41, subd. 1); (3) a cause of action for wrongful death is a cause of action for injury to *property* (*Matter of Meekin* v. *Brooklyn Hgts. R. R. Co.*, 164 N. Y. 145; (4) therefore, a cause of action for wrongful death is assignable. (See, also, *Matter of Fahys*, 18 F. Supp. 529.) However, I concur in the result because: (a) the assignment (a copy of which appears in the papers on the assignee's motion to intervene on this appeal, which we denied on March 25, 1963) is to an attorney of the 'right to sue' and not of the cause of action itself; (b) if it were an assignment of the cause of action, the assignment being to an attorney, would be void under Section 274 of the Penal Law, even if it was without consideration; and (c) if the assignee received a naked assignment of only the privilege to sue as plaintiff in lieu of the nonresident assignor, the assignee is not the real party in interest (*Brodner* v. *Brasselle*, 7 Misc. 2d 13)."

APPENDIX D

Opinions in Supreme Court

By Mr. Justice DiGiovanna

Steingold v. Capital Airlines, Inc.—This is a motion to quash service of process and dismiss the complaint against the defendant Rolls-Royce, Inc., on the ground that the court lacks jurisdiction over the subject matter of this action or on the alternative ground that the court should exercise its discretion to quash service and dismiss the complaint because this action should not have been brought in a New York State court.

This action is a wrongful death action. The decedent was killed in an airplane crash near Charles City in the State of Virginia on January 18, 1960. The plaintiff is a resident of the State of Virginia. He obtained letters testamentary from the Circuit Court for the City of Norfolk, Virginia, for the decedent who himself had been a resident of Virginia during his lifetime. Rolls-Royce, Inc., is a Delaware corporation which is registered to do business in the State of Virginia. The flight on which the decedent was killed was en route from Washington National Airport in Arlington, Virginia, to Norfolk, Virginia. The flight did not originate in, pass through nor was it destined for any point within the State of New York. At a hearing conducted by the Civil Aeronautics Board in Richmond, Virginia, of twenty-seven witnesses who testified, seventeen were Virginia residents, three were residents of England, two were residents of Maryland, two came from New York and one each from Connecticut and Michigan and one gave no address.

The action is apparently based upon the appropriate laws of the State of Virginia creating a cause of action for

wrongful death but the plaintiff seeks damages in excess of the maximum of $30,000 permitted under the Virginia wrongful death statute. Before commencing this action in New York State the plaintiff commenced an action in the United States District Court for the Eastern District of Virginia based precisely upon the same facts as those in this action. Process was served upon the same defendant on December 20, 1961. Another action has been commenced in the United States District Court for the Eastern District of Virginia by the administrator of Harold T. Geranson, also killed in that crash. He did not commence an action in this state. It appears affirmatively that the interests of justice would require that both actions be tried at the same time.

The complaint concerning the defendant movant alleges that it is a foreign corporation duly organized and existing under and by virtue of the laws of the State of Delaware and was licensed to do business on June 14, 1957, in the State of New York. In the memorandum objection is made that by having served a notice of special appearance under section 237a of the Civil Practice Act, the movant has waived its right to question the jurisdiction of this court to take cognizance of an action commenced as herein set forth.

This court is of the opinion that this action should be dismissed. This court is not bound to take cognizance of a tort action under the circumstances shown in this record. While the supplemental memorandum of the plaintiff stresses the fact that two witnesses resided in New York, it overlooks completely the absence of the other witnesses from this jurisdiction. This court is of the opinion that with the crowded condition of the courts of this state as a factor to be considered, the service of the summons should

be quashed and the action dismissed without prejudice to commencement of an action in the proper form. It is not a sufficient reason for this court to retain jurisdiction merely because the damages recoverable in New York may exceed that permitted in another state under its wrongful death actions. Motion is granted. Submit order.

Special Term, Part I—Steingold v. Capital Airlines, Inc.—This is a motion by Rolls-Royce, Ltd. The service of the summons was attempted to be made upon one Norman Miller, who it is claimed by the plaintiff, was an officer of Rolls-Royce, Ltd. The facts submitted in the affidavit of movant indicates clearly that Mr. Norman Miller had nothing to do with Rolls-Royce, Ltd., a British corporation, but that he was only an employee of Rolls-Royce, Inc., and had no authority to speak for Rolls-Royce, Ltd. Consequently the service of the summons under the circumstances upon him was improper. The purported service of the summons is vacated and set aside. Submit order.

Steingold v. Capital Airlines, Inc.—This is a motion by the defendants Capital and United to dismiss the complaint on the ground that the court has no jurisdiction of the person of the defendants nor of the subject of the action. It is based upon the same grounds that the decedent was a resident of the State of Virginia, the accident occurred in Virginia, the flight originated and ended in Virginia and had nothing to do with the State of New York. The reason why the summons was served upon the movants in New York was that they were doing business in the State of New York. That alone is not a sufficient reason for the courts of the State to entertain jurisdiction. The complaint is dismissed on the ground that the court has no jurisdiction of the subject matter of this action. Submit order.

Appendix D

Steingold v. Capital Airlines, Inc.—This is a motion to dismiss the action in so far as it related to the defendant Vickers-Armstrongs (Aircraft) Ltd., or in the alternative to set aside the service of the summons. As in one of the companion motions service was made upon Vickers-Armstrongs, Inc., and not under Vickers-Armstrongs (Aircraft) Ltd. The service of the summons is set aside and vacated. The action is dismissed. Submit order.

By Mr. Justice Brown:

Steingold v. Capital Airlines, Inc.—Motion by defendant Vickers-Armstrongs, Inc., under Rule 107 of the Rules of Civil Practice, for an order dismissing the complaint as against it on the ground that the court lacks jurisdiction over the subject matter of the action and that no sufficient reason exists for the exercise of jurisdiction by this court. The action is for wrongful death of plaintiff's testate, a resident of the State of Virginia, as a result of an airplane accident near Charles City, Virginia, on January 18, 1960. The flight originated in Chicago and was enroute from Washington, D. C. to Norfolk, Virginia, at the time of the crash. Neither the flight nor decedent had any contact with New York State. The moving defendant is a Delaware corporation with a certificate filed to do business in this state but it is claimed does not maintain an office here. At a hearing of the Civil Aeronautics Board conducted in Virginia seventeen of the witnesses were Virginia residents and only two were from New York. There is presently a suit based on the same wrongful death pending against all of the defendants in the United States District Court for the Eastern District of Virginia. The moving defendant has appeared and answered in that action and in this action. Another death action arising out of the same accident is also

pending in that court. Plaintiff does not dispute the foregoing facts excepting as to defendant's claim that it does not maintain an office in this state. The remaining defendants previously moved in this court to dismiss the complaint as to them on the same ground. The motion was granted (Steingold v. Capital Airlines, Inc. & c., 34 Misc. 2d 33).

The fact that it is here claimed that the moving defendant had an office in this state and that it has served an answer herein does not deprive the court of the right to exercise its discretion and refuse to entertain jurisdiction. The test is whether the circumstances of the case are of such special character as to warrant retention (Yesuvida v. Penn. R.R., 200 Misc. 815). Convenience "of the court, not that of the litigants, and practical considerations are the essential ingredients for the acceptance or the rejection of actions not otherwise mandated" (Williams v. Seaboard Air Line RR., 9 App. Div. 2d 268 and cases cited: cf. Winters, Jr. v. General Tire & Rubber Co., 13 App. Div. 2d 470). The fact that plaintiff seeks damages in excess of the maximum of $30,000 permitted under the Virginia wrongful death statute does not constitute such special circumstances. In Williams v. Seaboard Air Line Railroad (supra) the court pointed out that plaintiffs should not be encouraged to shop around for a foreign forum which they believe will be more favorable to them than the courts in their own state, saying "We do not believe that our judicial system will be improved by permitting suitors to transport their claims from place to place, absent special circumstances, and we are loath to approve the practice."

The convenience of seventeen Virginia prospective witnesses as against two New York prospective witnesses would be better served by a trial in Virginia. Furthermore,

another action is pending in that state by another Virginia resident against these defendants and that action might be consolidated, tried at the same time or immediately preceding the trial of this action thereby saving the time of litigants, witnesses and the court, without prejudice to the rights of the parties to the action.

Motion granted. Submit order."

Steingold v. Capital Airlines, Inc.—Cross Motion by Plaintiff for a reference to determine the fact of defendant Vickers-Armstrongs, Inc. doing business in this State is denied. In view of the determination made in the main motion decided simultaneously herewith. Submit Order.